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7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

9
10 UNITED STATES OF AMERICA,

Case No. 14-cr-0534-CRB

11 Plaintiff,

**DEFENDANT JAMES APPENRODT'S
SENTENCING MEMORANDUM**
Date: April 26, 2018
Time: 1:30 pm
Court: Hon. Charles R. Breyer

12 v.

13 JAMES F. APPENRODT,

14 Defendant.

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Case No. 14-cr-0534-CRB

DEFENDANT JAMES APPENRODT'S SENTENCING MEMORANDUM

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INTRODUCTION

2 We appreciate Mr. Raju's thorough Presentence Report and Sentencing
3 Recommendation and urge the Court to sentence Mr. Appenrodt to a non-custodial
4 sentence of probation for a period of three years, a criminal fine of \$29,669 and certain
5 special conditions including 150 hours of community service. It is particularly appropriate
6 here given Mr. Appenrodt's minor role and the non-custodial probation sentences that
7 Judge Hamilton imposed on similarly situated defendants in the East Bay bid-rigging
8 cases. We ask, however, that the Court not impose two of the special conditions: (1) the
9 no contact with any of the other defendants in this case as recommended in paragraph 4
10 and (2) the search condition in paragraph 7. Neither condition is justified by the facts and
11 circumstances of this case or by the otherwise thorough justifications set forth in
12 Mr. Raju's sentencing recommendation. We submit that the Probation Officer's
13 recommended sentence as modified is sufficient but not greater than necessary to achieve
14 all of the objectives under 18 U.S.C. Section 3553(a).

15 Jim Appenrodt is loyal to a fault. For most of his career in real estate, his loyalty to
16 others served him well. Unfortunately, it also led him to commit this offense. When Joe
17 Giraudo got sick and asked Mr. Appenrodt if he would stand in for him at the San Mateo
18 County auctions, Mr. Appenrodt said “yes” without hesitation. Mr. Appenrodt should
19 have asked more questions before saying “yes.” Then, once he learned how things worked
20 at the auctions, he should have stopped going. He failed to do so. As Mr. Appenrodt told
21 the Court at his change of plea hearing, “I did things that were helpful to the conspiracy. I
22 am guilty and I’m ready to accept responsibility.” 10/6/17 Tr. at 8:20-22.

23 That said, Mr. Appenrodt is unique among the defendants the Court will sentence in
24 this case. He never purchased properties for himself, acted only at the direction of
25 Mr. Giraudo (or on one occasion, at the direction of Mr. Rezaian when he picked up
26 envelopes from the Undercover Agent), and he received no direct financial benefit from
27 representing Mr. Giraudo at the auctions. He was in no sense a partner in the bid-rigging
28 scheme, but merely Mr. Giraudo's stand-in. He has otherwise conducted himself in a law-

1 abiding manner. He has suffered great shame and remorse as a result of his actions here
 2 and has agreed to surrender his real estate license. Further, his involvement in this crime
 3 stemmed from loyalty, not greed. In recognition of this fact, the government and
 4 Probation Officer have agreed that Mr. Appenrodt should receive a minor role adjustment.

5 For all these reasons, as well as those set forth in more detail below, we urge the
 6 Court to follow the recommendation of the Probation Officer (with the exception of the
 7 two special conditions discussed in more below).

8 **I. STATEMENT OF FACTS**

9 As of 2010, Mr. Appenrodt had been working as a real estate salesman in the Bay
 10 Area for about three decades. *See* PSR ¶ 47. In March 2010, Mr. Giraudo fell ill and
 11 asked Mr. Appenrodt to attend the San Mateo County auctions on his behalf. *Id.*
 12 Mr. Appenrodt agreed to help. *See id.* ¶ 17. He had a longtime personal and business
 13 relationship with Joe Giraudo, whom he first met in 1975. Beginning in 2006,
 14 Mr. Appenrodt listed properties for Mr. Giraudo at a discounted rate of 1% instead of the
 15 standard 2.5%. *See e.g., id.* ¶ 16. Soon after, Mr. Giraudo gave Mr. Appenrodt a personal
 16 loan to help him settle tax debts and pay off high-interest-rate obligations on his home. *Id.*
 17 ¶ 16. By 2010, Mr. Appenrodt had repaid Mr. Giraudo and sorted out his financial
 18 situation, and the two never discussed the loan again. *Id.* Nonetheless, Mr. Appenrodt felt
 19 a strong sense of loyalty to Mr. Giraudo for helping him get through a personal financial
 20 crisis. *Id.*

21 At the auctions, Mr. Appenrodt acted as Mr. Giraudo's representative. For the most
 22 part, Mr. Appenrodt stood by himself and awaited instructions from Mr. Giraudo, which he
 23 received by phone. *Id.* He did not purchase properties for himself and did not make
 24 decisions about which properties to purchase on Mr. Giraudo's behalf. PSR ¶ 17. Instead,
 25 he received instructions from Mr. Giraudo about how to bid on properties that Mr. Giraudo
 26 wanted to purchase. *Id.*

27 When he first started attending the auctions, Mr. Appenrodt was not aware of the
 28 bid-rigging conspiracy. PSR ¶ 17. It was not too long, however, before he learned that

1 bid-rigging was taking place as part of a conspiracy that predated his own attendance at the
 2 auctions. Mr. Appenrodt did not enter into bid-rigging agreements on his own. *Id.* ¶ 18.
 3 He also did not participate in negotiations concerning which of the partners in any given
 4 bid-rigging agreement would end up owning the property, whether and to whom they
 5 would offer payment to refrain from bidding or stop bidding, or other such details. *Id.*
 6 From Mr. Appenrodt's perspective, Mr. Giraudo made all of his own decisions concerning
 7 which of the properties he wanted to buy and the price he was willing to pay.

8 Mr. Giraudo gave Mr. Appenrodt instructions on when to bid or stop bidding. PSR
 9 ¶ 18. On one occasion, Mr. Appenrodt carried out Mr. Giraudo's instruction to offer a
 10 prospective bidder money to refrain from bidding. *Id.* ¶ 17. On another occasion, after
 11 being concerned about bad blood between Mo Rezaian and a person who turned out to be
 12 an informant, at Mr. Rezaian's request, Mr. Appenrodt agreed to collect envelopes from
 13 the Undercover Agent containing money owed to Mr. Rezaian, et al., for a prior property
 14 auction purchase. *Id.* ¶¶ 18-19. Mr. Appenrodt also represented Mr. Giraudo in several
 15 auctions in which Mr. Giraudo accepted money to refrain from or stop bidding, but
 16 Mr. Appenrodt did not personally retain any of the money he handled. *Id.* ¶¶ 18-19.

17 In fact, Mr. Appenrodt received no direct financial benefit from the conspiracy; he
 18 benefited only to the extent that he always did before and after the conspiracy by serving
 19 as a listing agent for Mr. Giraudo. When Mr. Giraudo purchased a property at auction and
 20 decided to resell it, Mr. Appenrodt typically listed the property, earning a discounted
 21 commission of 1%. PSR ¶ 16. This business arrangement predated the conspiracy and has
 22 continued since then in a number of real estate sales unrelated to the bid-rigging
 23 conspiracy. *Id.* Mr. Appenrodt never asked for direct compensation from Mr. Giraudo for
 24 attending the auctions on his behalf, and aside from one instance where Mr. Giraudo
 25 offered Mr. Appenrodt partial reimbursement for gasoline, he never received any money
 26 from Mr. Giraudo for the work he did on his behalf by attending the auctions. *Id.* In
 27 addition to what he did in San Mateo, on a few occasions, Mr. Appenrodt attended the San
 28 Francisco County auctions on behalf of Mr. Giraudo, performing the same limited role.

1 PSR ¶ 15.

2 The government's investigation became public in January 2011, and Mr. Appenrodt
 3 was indicted in October 2014. PSR ¶¶ 1, 13. On October 6, 2017, Mr. Appenrodt entered
 4 a guilty plea. PSR ¶ 2. He admitted to participating in 13 bid-rigging agreements in San
 5 Mateo County and two in San Francisco County. *Id.* ¶ 19. This included six properties
 6 Mr. Appenrodt helped purchase for Mr. Giraudo. *Id.* In his plea agreement,
 7 Mr. Appenrodt pledged to cooperate fully and truthfully with the Government. Plea
 8 Agreement ¶ 17, ECF No. 270 at 8-9. Mr. Appenrodt was interviewed by the Government
 9 after pleading guilty. PSR ¶ 20

10 **II. APPLICABLE SENTENCING GUIDELINES**

11 Mr. Appenrodt agrees with the Sentencing Guidelines calculations in the
 12 Presentence Report. He has no criminal history. PSR ¶ 40. The applicable Guidelines
 13 range, based on an adjusted offense level of 11 and a criminal history category of I, results
 14 in a range of 8 to 14 months. *See* PSR ¶ 59. This range falls within Zone B of the
 15 Sentencing Table, which means a sentence of probation is authorized. *See id.*; U.S.S.G.
 16 § 5B1.1(a)(2). Importantly, both the government and the Probation Officer agree that
 17 Mr. Appenrodt should receive a two-level minor role adjustment under § 3B1.2(b).

18 **III. ANALYSIS OF SENTENCING CONSIDERATIONS**

19 In determining the appropriate sentence, the Court applies the statutory sentencing
 20 factors set out in 18 U.S.C. § 3553(a). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir.
 21 2008) (en banc). The Court has broad discretion to grant a downward variance from the
 22 guidelines range. *See Kimbrough v. United States*, 552 U.S. 85, 101 (2007). There are
 23 several factors weighing in favor of a non-custodial sentence for Mr. Appenrodt: the need
 24 to avoid unwarranted sentencing disparities; the sufficiency of probation in achieving a
 25 sentence "sufficient, but not greater than necessary" to comply with the purposes of
 26 sentencing, 18 U.S.C. § 3553(a); the nature of the offense, including Mr. Appenrodt's lack
 27 of any criminal history before or since this incident; the collateral consequences of his
 28 conviction here to include agreeing to surrender his real estate license; and the fact that the

1 agreed upon volume of commerce calculation has the effect of exaggerating
 2 Mr. Appenrodt's criminal conduct in this case.

3 **A. The Need to Avoid Unwarranted Sentencing Disparities Weighs
 4 Strongly Against Imposition of a Custodial Sentence**

5 Under 18 U.S.C. § 3553(a)(6), the sentencing judge "shall consider . . . the need to
 6 avoid unwarranted sentence disparities among defendants with similar records who have
 7 been found guilty of similar conduct." Based on the government's large-scale prosecution
 8 of bid-rigging activities at foreclosure auctions throughout the Bay Area, the Court has
 9 numerous points of comparison to assist it in determining the appropriate sentence for
 10 Mr. Appenrodt. Specifically, Judge Hamilton has now sentenced over three dozen
 11 defendants in connection with bid-rigging activities at foreclosure auctions in Alameda and
 12 Contra Costa counties. The anti-competitive conduct in the East Bay cases was similar to,
 13 and in some ways, perhaps more egregious than the bid-rigging conspiracies at issue here.¹

14 Among the East Bay defendants, we are aware of six individuals who are similarly
 15 situated to Mr. Appenrodt where the government and Probation Officer recommended a
 16 minor role adjustment under § 3B1.2(b). Our review of the sentencing memoranda for
 17 these six individuals indicates that they too worked at the direction of someone else,
 18 operating with little or no independent authority, and did not personally purchase any
 19 properties or retain illegal payoffs. Like Mr. Appenrodt, each of them ultimately accepted
 20 responsibility and pled guilty. In all six cases, Judge Hamilton sentenced the defendants to
 21 three years' probation with no term in custody:

22 • **Irma Galvez** was "employed by and under the supervision of Stanley
 23 Kahan . . . She attended the public auctions and placed bids, as directed by
 24 Kahan. Galvez had no independent authority at the auctions,"" and "did
 25 not receive any additional compensation for participating in the offense
 26 conduct" beyond the hourly wage she earned as an employee of Mr. Kahan.

27 ¹ For instance, there were secondary auctions conducted by the conspirators in the East
 28 Bay.

1 Irma Galvez's Sentencing Memorandum, *United States v. Galvez*, No. 4:13-
 2 cr-00414-RJH, ECF No. 40 at 1 (quoting PSR). Ms. Galvez's probation
 3 officer acknowledged that her volume of commerce figure "severely
 4 overstates her involvement as the properties were selected by her employer,
 5 and she received no proceeds from the illegal scheme." *Id.* (quoting PSR).
 6 Like Mr. Appenrodt, her adjusted offense level was 11. Ms. Galvez received
 7 no jail time.

- 8 • **Eric Larsen** "acted as a proxy for George and Terry Cheng," who were
 9 major players in the East Bay auctions, "never bid during the auctions
 10 without instructions from his employer," "had little role in collecting or
 11 paying round profits," and aside from a salary he received from his
 12 employer, "received no share of the round payments." United States'
 13 Sentencing Memorandum, *United States v. Larsen*, No. 4:11-cr-00723-PJH,
 14 ECF No. 43 at 2. Like Mr. Appenrodt, his adjusted offense level was 11.
 15 Mr. Larsen received no jail time.
- 16 • **Bradley Roemer** participated in non-competitive auctions for a period of
 17 eleven months, purchasing seven properties for his father's companies and
 18 accepting payoffs for not bidding on four other properties. *See* Defendant's
 19 Sentencing Memorandum, *United States v. Roemer*, No. 4:15-cr-00229-PJH,
 20 ECF No. 33 at 6. Mr. Roemer's "conduct was on behalf of his father and all
 21 of the illegal profits derived were passed on to his father's companies." *Id.*
 22 (quoting PSR). His father also held decision-making authority. *Id.* Like
 23 Mr. Appenrodt, his adjusted offense level was 11. Mr. Roemer received no
 24 jail time.
- 25 • **Garry Wan** "was a regular participant in the Alameda County bid-rigging
 26 conspiracy for nearly three years," purchasing 46 properties for his
 27 employers, the Chongs, with an aggregate value of \$10.9 million. United
 28 States' Sentencing Memo, *United States v. Wan*, No. 4:14-cr-00604-PJH,
 ECF No. 33 at 2. However, he "act[ed] as little more than a messenger on
 behalf of the Chongs, doing only, and exactly, as he was instructed by
 George's wife Terry to do. He had no financial interest in these transactions,
 and no discretion or autonomy." Defendant Garry Wan's Sentencing Memo,
United States v. Wan, No. 4:14-cr-00604-PJH, ECF No. 32 at 2. His
 adjusted offense level was 13. Mr. Wan received no jail time.
- **Jorge Wong** participated in the Alameda County bid-rigging conspiracy
 while working for his uncle's real estate company. When solicited to
 participate in the post-auction rounds, Mr. Wong "would report this to his
 uncle over the phone, who would then make the decision whether to
 participate." United States' Sentencing Memorandum, *United States v.*
Wong, No. 4:11-cr-00428-PJH, ECF No. 53 at 2. The Government agreed to

1 recommend a minor rule adjustment for Mr. Wong “based on [his] more
 2 limited participation in the conspiracy at the direction of a family member.”
 3 *Id.* at 5. Like Mr. Appenrodt, his adjusted offense level was 11. Mr. Wong
 received no jail time.

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- 5 • **Gernot Zepernick** was a salaried employee of a company owned by the
 6 Chengs. While attending auctions, “Zepernick was on the phone with the []
 7 office and would receive instructions on which properties to bid, whether to
 8 agree to stop bidding and hold a round, and how much to bid.” United
 9 States’ Sentencing Memorandum, *United States v. Zepernick*, No. 4:14-cr-
 10 00512-PJH, ECF No. 27 at 2. He collected and distributed payoffs, but “did
 11 not keep the money and always handed it over to someone at the [] office.”
 12 *Id.* He “purchased 29 properties on behalf of his employer worth
 13 approximately \$6.39 million.” *Id.* Like Mr. Appenrodt, his adjusted offense
 14 level was 11. Mr. Zepernick received no jail time.

15 The need to avoid unwarranted sentencing disparities is particularly relevant here.
 16 *See* PSR ¶ 77. In his detailed Sentencing Recommendation, Mr. Raju highlights those
 17 factors that demonstrate why a sentence of probation is appropriate including: the need to
 18 avoid sentencing disparities, Mr. Appenrodt’s clean record, his work history that began
 19 when he was 8 years old, his steady employment at Laurel Realty since 1981, his minor
 20 role in the conspiracy, the fact that he “did not have decision-making authority or directly
 21 profit from the payoffs or resale of the rigged properties” other than earning a 1% listing
 22 agent commission on properties listed by Mr. Giraudo. *See*, SR at Page 2. He also
 23 specifically rejected the need for location monitoring given his lesser role in this case. *Id*
 24 at 3. We urge this Court to follow the probation Officer’s sentencing recommendation
 25 with the exception of the two special conditions that are not warranted here.

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**B. The Section 3553(a)(2) Factors Do Not Support a Custodial Sentence for
 Mr. Appenrodt**

29 The purposes of sentencing will be achieved if the Court imposes a non-custodial
 30 sentence on Mr. Appenrodt. Sentencing a defendant to probation is not “an act of
 31 leniency.” *Gall v. United States*, 552 U.S. 38, 44 (2007). Probation is a punitive measure,
 32 and “may be used as an alternative to incarceration, provided that the terms and conditions
 33 of probation can be fashioned so as to meet fully the statutory purposes of sentencing,

1 including promoting respect for the law, providing just punishment for the offense,
 2 achieving general deterrence, and protecting the public from further crimes by the
 3 defendant.” U.S.S.G., ch. 5, pt. B, introductory cmt. A probationary sentence would
 4 “substantially restrict [Mr. Appenrodt’s] liberty,” *Gall*, 552 U.S. at 48, and will serve a
 5 punitive and deterrent effect without the need for incarceration.

6 Moreover, a sentence of probation would be sufficient to protect the public from the
 7 possibility of future offenses by Mr. Appenrodt. *See* 18 U.S.C. § 3553(a)(2)(C). After
 8 entering his guilty plea, Mr. Appenrodt voluntarily initiated the process to surrender his
 9 real estate license and is now mostly retired from the real estate business. PSR ¶ 47 As
 10 described in more detail below, Mr. Appenrodt had a clean record before this offense and
 11 in the seven years since the investigation became public. He feels great shame about his
 12 conduct and conviction here. *Id.* ¶ 24. The public would derive no benefit from
 13 incarcerating him or punishing him further. Likewise, there is no need to provide
 14 Mr. Appenrodt with education or vocational training, medical care, or correctional
 15 treatment. *See* 18 U.S.C. § 3553(a)(2)(D).

16 C. The Nature and Circumstances of the Offense

17 The nature and circumstances of Mr. Appenrodt’s offense further demonstrate why
 18 a custodial sentence would not be appropriate.

19 1. Mr. Appenrodt Was Not Motivated by Greed, Genuinely 20 Accepted Responsibility and Agreed to Cooperate with the Government

21 There are several ways in which Mr. Appenrodt’s guidelines range exaggerates the
 22 nature and circumstances of the offense. Alone among the defendants this Court will be
 23 sentencing, and in contrast to the East Bay defendants who received minor role
 24 adjustments but were paid a wage or salary for their work, Mr. Appenrodt received no
 25 direct compensation. *See United States v. Prosperi*, 686 F.3d 32, 44 (1st Cir. 2012)
 26 (district court properly considered fact “that the defendants did not seek to enrich
 27 themselves personally and did not personally benefit from the scheme”). Although
 28 Mr. Appenrodt received partial reimbursement for some of his travel costs, this actually

1 highlights the fact that, on balance, he was not making money by representing Mr. Giraudo
 2 at the auctions. His agreement with Mr. Giraudo to sell properties at a discounted listing
 3 rate of 1% both pre- and post-date his involvement in the offense.

4 In addition, Mr. Appenrodt's acceptance of responsibility goes beyond the mere
 5 agreement to plead guilty. At his change of plea hearing, Mr. Appenrodt gave a forthright
 6 summary of his offense conduct and told the Court that "I am guilty and I'm ready to
 7 accept responsibility." 10/6/17 Tr. at 8:9-22. Likewise, the Probation Officer observes
 8 that Mr. Appenrodt discussed in his presentence interview his "deep remorse and regret for
 9 his actions" and that "he is ashamed of what he did." PSR ¶ 24. We ask the Court to
 10 consider Mr. Appenrodt's genuine acceptance of responsibility in fashioning an
 11 appropriate sentence.

12 Although Mr. Appenrodt was not an early cooperator, his decision to assert his
 13 constitutional rights before pleading guilty furthered the interests of justice and the public
 14 at large and should not be used against him. Along with Mr. Giraudo and their three other
 15 co-defendants, Mr. Appenrodt litigated the motion that resulted in this Court's order
 16 suppressing the illegal recordings captured outside the San Mateo County Courthouse.
 17 That Order, and the published Order clarifying the defendants' standing to challenge the
 18 illegal recordings, are important decisions at the cutting edge of the law governing
 19 electronic surveillance. *See United States v. Giraudo*, 225 F. Supp. 3d 1078 (N.D. Cal.
 20 2016); *United States v. Giraudo*, No. CR-14-534-CRB, 2016 WL 4073243 (N.D. Cal. Aug.
 21 1, 2016). In addition, by refusing to plead guilty to inappropriate mail fraud charges,
 22 Mr. Appenrodt and his four co-defendants won a significant victory for all the defendants
 23 in this case when the government decided to dismiss the mail fraud charges *en masse*.
 24 None of that would have happened had Mr. Appenrodt and Mr. Giraudo and their other
 25 co-defendants not discovered the wrongdoing buried in the government's reports and filed
 26 a motion to suppress. *See* ECF No. 177.

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2. The Stipulated Volume of Commerce Overstates Mr. Appenrodt's Involvement in the Conspiracy

3 Mr. Appenrodt stipulated to a volume of commerce totaling \$2,134,447. PSR ¶ 19.
4 That figure is based on six properties that Mr. Appenrodt assisted Mr. Giraudo in
5 purchasing. *Id.* Mr. Appenrodt agrees that his volume of commerce is \$2,134,447 and that
6 this figure adds two points to his adjusted offense level pursuant to U.S.S.G.
7 § 2R1.1(b)(2)(A). However, because the stipulated volume of commerce overstates
8 Mr. Appenrodt’s involvement in the conspiracy, we urge the Court to take into
9 consideration this overstatement in fashioning an appropriate sentence.²

10 Section 2R1.1, the antitrust sentencing guideline, explains that “[f]or purposes of
11 this guideline, the volume of commerce attributable to an individual participant in a
12 conspiracy is the volume of commerce done by him or his principal in goods or services
13 that were affected by the violation.” As discussed, Mr. Appenrodt did not purchase
14 properties for himself, only for Mr. Giraudo. *See* PSR ¶ 17. There was no commerce
15 “done by” Mr. Appenrodt directly, only commerce “done by” Mr. Giraudo, “his principal.”
16 *See* U.S.S.G. § 2R1.1.

17 There are two ways in which Mr. Appenrodt's stipulated volume of commerce, and
18 the resulting two-level increase to his offense level, overstate his involvement in the
19 conspiracy.

20 First, if any of the six properties attributed to Mr. Appenrodt's volume of commerce
21 were *also* counted towards Mr. Giraudo's volume of commerce (or that of any of the other
22 defendants), it would constitute double-counting, which is disfavored under the
23 guidelines.³ As the Sentencing Commission explains in its commentary, if a defendant

²⁵ Although he stipulated to this volume of commerce as part of his plea agreement,
²⁶ Mr. Appenrodt did not waive his right to argue this point under § 3553(a).

³ For purposes of checking Mr. Appenrodt's property list against those of other defendants, the properties attributed to Mr. Appenrodt's volume of commerce are 131 Alexander (footnote continued)

1 agrees to submit a rigged bid that he does not in fact win, “his volume of commerce would
 2 be zero,” indicating that a given sale should be attributed only to the winning bidder and
 3 not to co-conspirators. *See U.S.S.G. § 2R1.1 cmt. n.6; see also United States v. Heffernan*,
 4 43 F.3d 1144, 1148 (7th Cir. 1994) (Posner, J.) (“For purposes of determining the amount
 5 of commerce, the guideline counts every sale just once.”).

6 Second, even if there is no double-counting, the two-level increase Mr. Appenrodt
 7 will receive for his volume of commerce exaggerates the gravity of his offense conduct.
 8 Mr. Appenrodt had no control over which properties would end up being formally
 9 purchased by Mr. Giraudo – as opposed to one of the other partners in the conspiracy – and
 10 thus count towards his stipulated volume of commerce.

11 In fashioning an appropriate sentence, even though the stipulated guidelines range is
 12 the appropriate starting point, the fact that Mr. Appenrodt did not purchase, make the
 13 decision to purchase or otherwise share in the risk or reward of making that purchase is a
 14 further differentiator in terms of evaluating the volume of commerce adjustment agreed to
 15 in this case. *Cf. United States v. Restrepo*, 936 F.2d 661, 667 (2d Cir. 1991) (holding, in
 16 the related context of downward departures, that “where, as here, an offense level has been
 17 extraordinarily magnified by a circumstance that bears little relation to the defendant’s role
 18 in the offense” a lower sentence “may be warranted on the ground that minimal
 19 participation exists to a degree not contemplated by the guidelines”); *United States v.*
 20 *Stuart*, 22 F.3d 76, 83 (93d Cir. 1994) (same).

21 **D. Mr. Appenrodt’s History and Characteristics**

22 Mr. Appenrodt has worked since the age of 8, and started working in real estate in
 23 1971, when he was 19 years old. PSR ¶¶ 46-47 Prior to this case, and over the course of
 24 his lengthy career, Jim had a clean record with the Bureau of Real Estate and as a notary

25 _____
 26 Avenue, Daly City; 40 Highland Avenue, Daly City; 637 Foothill Drive, Pacifica; 91 El
 27 Portal, Daly City; and 2250 33rd Avenue, San Francisco.

28

1 public registered with the Secretary of State. But for this case, he has never been accused
 2 of any wrongdoing nor has he ever been arrested or convicted of any crime. After
 3 pleading guilty, Mr. Appenrodt voluntarily surrendered his real estate license and let his
 4 notary public license expire. *Id.* ¶ 54. He is now mostly retired. *Id.* ¶ 47

5 Mr. Appenrodt and his wife have three adult children, with whom he is very close.
 6 PSR ¶ 49. Two of them live in the Bay Area. *Id.* ¶ 48. Although Mr. Appenrodt's family
 7 remains supportive, his involvement in this criminal activity and subsequent prosecution
 8 has been stressful, has negatively impacted his business reputation, and has caused feelings
 9 of shame and regret. *See id.* ¶¶ 24, 51.

10 Letters of support from Mr. Appenrodt's family and friends detail his positive
 11 impact on their lives and explain why his criminal conduct was so out of character. All of
 12 the letters describe a devoted family man who is loved by all around him. *See Exhibits A-*
 13 **H.** In a particularly moving letter, Mr. Appenrodt's sister-in-law Lana discusses how
 14 Mr. Appenrodt reacted when his brother Ed fell ill and died at a young age, stepping in to
 15 help with the couple's four children and orchestrating "everything from grand gestures to
 16 the mundane details of everyday life." **Exhibit A.** Other letters describe Mr. Appenrodt's
 17 penchant for organizing luncheons for elderly friends and neighbors and reminiscing with
 18 them about the "old days." *See Exhibits B and C.*

19 Some of the letters hint at how Mr. Appenrodt's unwavering loyalty may have led
 20 to his involvement in the offense, and they discuss how Mr. Appenrodt has sought to
 21 change his life in response to the criminal charges. Mr. Appenrodt's son Jeff suspects that
 22 his father's tendency to "go[] out of his way for others" led him to agree to attend property
 23 auctions on behalf of his Mr. Giraudo, who was ill at the time. **Exhibit B.**

24 Mr. Appenrodt's brother Joe discusses how, as a result of his involvement in criminal
 25 activity, "Jim's reputation has been tarnished and I know that he felt humiliated and
 26 remorseful. Jim has spent the last few years on a quest to rebuild and redeem himself.
 27 This has included creating a more balanced life and an even more thoughtful approach to
 28 his entire family." **Exhibit C.** Walter Renner, a friend of Mr. Appenrodt's for nearly 50

1 years, relates how, as a result of this incident, Mr. Appenrodt has gone from a relentless
 2 worker whom people called “Mr. 24-7” and “Superman” to “spend[ing] a lot more time
 3 with family and friends He still spends some time at his office but I would say he is
 4 semi-retired.” **Exhibit D.⁴**

5 **E. There Is No Basis for Restitution**

6 The government has agreed not to seek restitution. *See* Plea Agreement ¶ 11, ECF
 7 No. 270 at 6. The Probation Officer agrees, noting that Mr. Appenrodt did not personally
 8 retain any payoff money, and observing that it would be impossible to determine the
 9 amount of restitution owed to the bank for any particular property. PSR ¶¶ 22, 69.

10 **F. There Is No Basis for the No Contact Or Search Special Conditions**

11 The Presentence Report recommends that Mr. Appenrodt have no contact with any
 12 of the other co-defendants in this case. It also recommends a search condition. Neither is
 13 warranted here and should not be included in the sentence to be imposed by this Court.

14 First, this investigation became public in January 2011 and Mr. Appenrodt was
 15 indicted in 2010. There has been no claim by the Government that there was any
 16 continuing conspiracy, improper contacts, other crimes or anything else that would give
 17 rise to either suggested condition. Importantly, despite his otherwise thoughtful
 18 explanation for his sentencing recommendation, there is nothing that supports either
 19 condition in the 5 page sentencing recommendation made by Mr. Raju. Throughout the
 20 7 years that this matter has been pending, Mr. Appenrodt has been in contact with many of
 21 the people, especially, Mr. Giraudo, that the Probation Officer now recommends he stay
 22 away from.

23 Second, there is no suggestion that Mr. Appenrodt has done anything in the past 7
 24 years that would give rise to a search condition. There is no ongoing crime or even any
 25

26 ⁴ Additional letters are attached as Exhibit E (his daughter), Exhibit F (his wife), Exhibits
 27 G-H (two close personal friends).

1 concern that there might be. Nor is there any suggestion of any other demonstrated need
 2 on any other basis for such a condition. If there is a concern about the payment of the fine,
 3 we suggest making the fine payable within 30 days. Once paid, even that purported
 4 justification evaporates.

5 **REMAINING OBJECTIONS/CORRECTIONS TO THE PRESENTENCE
 REPORT**

7 The Probation Officer made many of our suggested corrections and objections to
 8 the draft Report but we note the following areas that still need to be addressed:

9 Paragraph 16. Mr. Appenrodt made the arrangement with Mr. Giraudo to reduce
 10 his listing fee to 1% beginning in 2006 and continuing to the present. Also, while
 11 Mr. Appenrodt does not dispute that Mr. Giraudo loaned him money when he needed it –
 12 and the loan was eventually repaid in full – he did feel a tight bond with Mr. Giraudo for
 13 helping him out when the chips were down. The “moral” obligation described at the end
 14 of ¶ 16 was really more of a sense of loyalty to a close friend who needed his help rather
 15 than any quid-pro-quo.

16 Paragraph 20. In his initial statements to the FBI, he was confronted with their
 17 assertions that he had paid off others and/or had been paid off by them as part of the bid
 18 rigging activities in this case. He appropriately denied these allegations.

19 ///

20 ///

21 ///

22 ///

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24 ///

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28 ///

CONCLUSION

2 For the foregoing reasons, Mr. Appenrodt respectfully requests that the court
3 impose the Probation Officer's suggested sentence of three years' probation on condition
4 he perform 150 hours of community service and pay a fine of \$26,669 along with those
5 other special conditions requested with the exception of the no contact and search
6 conditions in paragraphs 4 and 7 in the sentencing recommendation addendum to the PSR.

7 | DATED: April 19, 2018

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Jeffrey L. Bornstein
Jeffrey L. Bornstein

Attorneys for Defendant
JAMES F. APPENRODT

EXHIBIT A

Honorable Charles R. Breyer USDC

Northern District of California

450 Golden Gate Avenue,

17th Floor San Francisco, CA 94102

2/01/2018

Your Honor,

I first met James Appenrodt when I was fifteen years old. A shy teenager from an overprotective Russian-American family, I was introduced to “Jimmy” during a family dinner at which I was a guest of his eldest brother Edward. James and Edward were part of a boisterous Irish Catholic family that prized loyalty, hard work, and strength of conviction. That first night, Jim peppered me with questions about my family, my friends, my career goals, and my intentions with his brother. Even as the younger brother, Jim was fiercely protective of his brother, and yet he was also the member of the family that made me feel the most welcome. I have known Jim now for 55 years, and this unwavering loyalty and generous spirit have continued to grow to create a man that I am proud to call my brother-in-law.

My husband Edward and I had four beautiful children. Tragically, Edward became very sick at a young age and eventually passed away in 1991. Jim provided a crucial support system for myself and my children. He coached my eldest son’s Little League baseball team after my husband had signed up but was too ill to continue, and would constantly check in with the family to do whatever was needed. This encompassed everything from grand gestures to the mundane details of everyday life.

A busy husband and father of three, Jim tirelessly worked to support his immediate family, and grow his business, while also ensuring that the extended family remained tied together. After his father, the patriarch, passed away in 1995, Jim took on this role in many ways. I am probably most impressed by his sincere devotion to his family. This includes my children, and all of his cousins, and nieces and nephews. He is a deeply sentimental man, and this love is genuine.

Of course, as many great men are, Jimmy is flawed as well. In his pursuit of material comforts, he did not honor the legal and moral practices of his industry. I know that he is deeply regretful of bringing any kind of shame to his family, and I would implore that you factor in his generous and loving heart and spirit. As a patriarch of a family that has faced much adversity, Jim’s presence in our lives not only enriches us all, but allows us the strength and courage to pursue our individual destinies, knowing that his love is a constant and pure truth. Please do not hesitate to contact me with any questions.

Sincerely,

Lana Appenrodt
lappenrodt@gmail.com
650-307-2369

EXHIBIT B

February 12, 2018

Honorable Charles R. Beyer
USDC, Northern District of California
450 Golden Gate Avenue, 17th Floor
San Francisco, CA 94102

Honorable Charles R. Breyer,

I am proud to begin this letter by saying that Jim Appenrodt is not only my father, but also one of my best friends. I am 34 years old, the oldest child of three and his only son. He is a true family man and has always made me feel greatly loved and supported since the day I was born. I have always had a close and loving relationship with my father.

Since childhood, I have realized how very fortunate I am to have Jim as a father. At a very young age he taught me how to play every sport and even had a set of his own golf clubs cut down to teach me golf. We would always play sports together in the front yard and often the neighborhood kids would join in the fun. One day a neighborhood boy rang our doorbell and instead of asking to play with me, asked my mom, "Can Jim come out and play?" We still laugh about that now... my dad was a hit in the neighborhood! At the end of the day, I would play outside with my baseball glove, waiting excitedly for my dad's arrival home to play catch, shoot basketball hoops, or chip golf balls. He always called me his little "buddy."

My Dad enjoyed sharing his love of sports with me. He coached my little league teams and took me to countless Giants, Warriors, and 49er games. He took my friends and I on golf trips, barbecued for us and always showed us a great time.

When I graduated from high school, I decided to go into real estate. My father was a great mentor. All of his clients, colleagues and peers always respected him and grew to respect me. It impressed me how he made time for everyone who needed him. He looked out for his elderly friends and clients, going out of his way to always arrange luncheons, pick them up and make sure they got to visit and reminisce about the "old times." He even visited clients in rest homes or hospitals showing his compassion and concern.

My father truly values family and family traditions. He always tells great stories of his parents, siblings and childhood days. He finds it important to keep in touch with all family members and be the leader of many gatherings bringing so many others together.

As I have seen my entire life, my father truly goes out of his way for others. With regard to these criminal charges, I know that he was just acting on behalf of Mr. Joe Giraudo, who was ill at the time. At Mr. Giraudo's request and per his instructions, my father, acting as a representative for Mr. Giraudo, was attending the property auctions. I know my father had never intended to purchase any of these properties for himself, nor did he use any of his own funds. He did not realize he was doing anything illegal.

His love for family and tradition, endless loyalty and generosity, taking care of others and making people happy are what he is all about. I am very proud that I have had the opportunity to work with my father and learn the old-fashioned way of loyal "hands on" business with clients.

I am and always have been very proud to call Jim Appenrodt, my father.

Yours truly,



Jeff Appenrodt
294 29th Street
San Francisco, CA 94131

E X H I B I T C



February 5, 2018
Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Avenue 17th Floor
San Francisco, CA 94102

Dear Honorable Judge Breyer

I am writing in regard to my brother, Jim Appenrodt. As an older brother, Jim was always present in my life. He was my best man, helped me find my first house and gave me the down payment. Jim has stayed close to both my daughters and has been a strong and positive influence on their lives. Throughout our lives, Jim has always been there whenever our family or friends needed help. When my older brother Ed was dying of cancer at forty three (43) Jim provided emotional and financial support to Ed, his wife and four children. This support has continued to this day.

Jim has been an active member of his community throughout his life. He has been a coach and mentor to many young men and women in Marin County. In his work community- the Noe Valley- Jim organizes lunches and dinners on a regular basis that include many Noe Valley residents/seniors and provides an opportunity to get out and share stories about the good old days. I have attended many of these events and they are great.

I know Jim deeply regrets his decision in committing the crime. His actions have had an effect on his family and friends. Jim's daughter was an intern at the Department of Justice at the time of his indictment and had to inform her supervisor of her father's indictment. Jim's reputation has been tarnished and I know that he felt humiliated and remorseful. Jim has spent the last few years on a quest to rebuild and redeem himself. This has included creating a more balanced life and an even more thoughtful approach to his entire family. I think this is a reaction to the crime he committed.

I believe in Jim- I always have. I know he made a big mistake and he is also aware of that fact. Jim will continue to do good things and maybe even more because of what happened. Thank you for your consideration regarding Jim.

Sincerely,



Joe Appenrodt

APPENRODT
COMMERCIAL
PROPERTIES

4375 Capitola Road
Capitola, CA 95010

831.234.8554 O
831.465.9195 F

EXHIBIT D

February 5, 2018

Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Avenue, 17th Floor
San Francisco, Ca. 94102

Re: Jim Appenrodt

Dear Honorable Judge Breyer,

My Name is Walter Renner. I have been in the real estate business for the last 55 years. I own Walter Renner & Co. Real Estate located at 1243 Broadway in Burlingame, CA. I am writing this letter on behalf of my friend and colleague Jim Appenrodt in hopes that you have a more personal understanding of his character.

I first met Jim in 1967 at the San Francisco Real Estate Board Golf Tournament in Pebble Beach. I could see right away that he was a go-getter. Shortly thereafter he brought me an offer on one of my properties and we have been doing business together ever since. I consider Jim to be one of my best friends. He has great integrity. His word is his bond and you can always depend on him to get the job done. Jim is a wonderful family man and very involved in sporting events with family and friends.

I find it hard to believe that Jim committed a crime as it is very out of character for him. I don't think he realized what he was getting himself into. My understanding is that he was just bidding on a property for the real buyer and if he was successful he would get the listing on that property and then make a commission. I truly believe this has taught Jim a great lesson and you would not have to worry about him ever doing anything like this again.

We use to call Jim Mr. 24-7. We even have a friend that called him Superman as he was always looking to make a deal. Since this incident has happened, I see quite a few changes in Jim. He spends a lot more time with family and friends. He plays golf three to four times a week and goes to the Bay Club to work out on a daily basis. He still spends some time at his office but I would say he is semi-retired.

In my opinion, Jim is a good man, a God loving man and a wonderful friend. I hope this letter will be helpful for you in making a fair decision.

Thank you,



Walter Renner

EXHIBIT E

Juliana Appenrodt
1750 Beach Street #15
San Francisco, CA 94123
juliana.appenrodt@gmail.com

February 10, 2018

Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Avenue, 17th Floor
San Francisco, CA 94102

Your Honor,

I'm lucky enough to call Jim Appenrodt my dad. I'm his middle child, his first girl, his "Rose." My dad has always loved to give us nicknames—some silly, others sweet—and in my 28 years, I've been the recipient of countless Dad-invented monikers. Some stick, others get used just once or twice, but with every newly minted nickname, one thing shines through: my dad's thoughtful, loving nature.

My entire life, I've watched my dad work hard to make everyone around him happy. That's all he ever really wants—to see the people he cares about smile. As a kid, that meant bringing me home my favorite raviolis for dinner, or telling anyone that would listen the story of my heroic second-grade softball catch. He spent years coaching me and my friends in soccer, softball, and basketball, teaching us how to play our best while still having a blast. And when I joined an adult softball league my first year living in San Francisco, my dad couldn't wait to fall back into his old role, taking my entire team out to a baseball diamond to brush up on our skills before the first game.

My dad has always cherished sharing his love of sports with us, but even more than that, I know he just cherishes the chance to spend time with us. Family has always been extremely important to my dad, and he's kept incredibly close relationships with his siblings, cousins, aunts, uncles, nieces, and nephews throughout the years. His parents passed away when I was young, but I got to watch how kind and compassionate he was with my other grandma, his mother-in-law, as she got older. Towards the end of her life, he would stop by to see her almost daily, helping to feed her and keep her company, brightening the long days she spent mostly sitting in her favorite chair. My grandma adored him.

I've watched my dad win the adoration of so many people throughout my lifetime—people young and old, everywhere from the office to our favorite restaurants. My first real job the summer after my freshman year of college was working with my dad and brother in their real estate office. From the many clients and associates who would walk through the door, I got to hear just how much they loved working with my dad—and it was evidenced by how long he'd been in many of these people's lives.

Both at home and at work, I've seen firsthand how my dad approaches life, and I truly believe that he wouldn't knowingly do anything in his business dealings that was against the law. My dad is many things—generous, caring, funny—but he is not, at heart, a criminal. He's a good man, a loving dad, and one of my biggest cheerleaders—on the softball field and in life.

Sincerely,

A handwritten signature in black ink that reads "Juliana Appenrodt". The signature is fluid and cursive, with "Juliana" on the top line and "Appenrodt" on the bottom line.

Juliana Appenrodt

EXHIBIT F

FEBRUARY 1, 2018

Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Avenue, 17th Floor
San Francisco, CA 94102

To the Attention of: Honorable Charles R. Breyer

I had the good fortune to meet James Felix Appenrodt almost 40 years ago. On February 13, 2018, we will celebrate our 36th Wedding Anniversary. James (Jim) and I are the proud parents of three children, Jeffrey (34), Juliana (28) and Joelle (24) Appenrodt. Jim and I were both raised with strong family values. Our children have been a source of incredible joy and pleasure for which Jim and I share enormous pride.

Jim has always been a hard working individual dedicated to providing for his family. Jim was very active with our children and the community when he began coaching during our children's school years. He always made time to coach our son's teams in Little League from second grade through junior high. Jim also coached our daughters' teams in soccer, softball and basketball. Our son, Jeff, often assisted Dad with coaching duties. Jim spent many hours coaching while I cheered our kids' teams to many victories!

Ever since I met Jim, I have watched him and shared with him the value of family, with great love and respect for our parents, siblings, aunts, uncles, cousins and friends. Jim enjoys many friendships, some dating back to his early childhood. He is well respected by his peers. These individuals who have been a part of Jim's life, myself included, have been witness to a kindhearted, most generous and very hard working man.

Jim has been very proud of his lifelong career in the real estate business. During the years I have spent with Jim, I have heard nothing but admiration from his many business associates and peers, praising him for his honesty, generosity and fair nature. I have never known Jim to take advantage of anyone for his own monetary gain.

I believe in my heart that Jim would never intentionally and knowingly enter into any business dealings against the law. Jim can be best described as a loving husband and father, someone always there for people he cares about and always ready to lend a helping hand.

I appreciate the opportunity to write this letter on Jim's behalf.

Sincerely Yours,

Carol Ann Appenrodt

Carol Ann Appenrodt

72 Peacock Drive
San Rafael, CA 94901

EXHIBIT G

February 10, 2018

Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Avenue, 17th Floor
San Francisco, Ca 94102

Your Honor,

I am writing to you regarding the case against Jim Appenrodt. My name is Steve Morello and I have recently retired from my job of 38 years in the Food Service industry. Jim and I have been friends for over 55 years. We met at St. Veronica's Catholic Grammar School in South San Francisco, we were altar boys, played sports and grew up during a great time in this country.

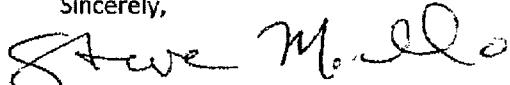
We bought our first house together in the mid 70's and during that period I met my wife Janet (we have been married for 38 years & have 4 grown children & 4 grandchildren) and Jim, too, also met his wife Carol (they have been married for 36 years and have 3 children).

Not many people can say that they have been friends with someone for that length of time and I am proud to say that Jim Appenrodt is my close friend. I know he will always be there to support my family & myself. Jim is the Godfather to my youngest son who has learning differences. Jim has always been there for him, whether its taking him to a game or giving him tickets to the Giants or Warriors, (he loves sports), as well as much needed life advice coming from someone other than his parents or siblings.

Whether its his family, friends or his job, Jim continues to be dedicated throughout his life.

I understand Jim made an error in judgement. I am pretty sure he has never been in trouble before. I know from discussions with him that he is very sorry for what has happened, and this is out of character for him. He is a good soul that made a mistake and as his friend I hope you understand my words in this letter.

Sincerely,



Steve Morello

1601 Cypress Ave.

San Mateo, CA 94401

EXHIBIT H

Antonio Castellucci

14 Pelican Point Road - Belvedere, Ca 94920 - 415 948 4595

February 2, 2018

Honorable Charles R. Breyer
USDC, Northern District of California
450 Golden Gate Ave, 17th Floor
San Francisco, CA 94102

Dear Honorable Charles R. Breyer,

My name is Antonio Castellucci, I've been Jim Appenrodt's personal friend for 20 years and I feel as though I know him and his family very well. Our families socialize together, travel together and are involved in our children's lives as milestones occur.

In reference to the matter at hand, I have no knowledge of the case. I can; however, speak to the moral character of Jim as a person. He is and has always been thoughtful, a loving and involved father and a productive member of our society.

Despite the situation, I personally vouch for him and believe his character to be good.

Over the last 20 years, in many occasions I've called Jim for advice, I've always respected his work ethic, his efficiency, generosity and kindness.

Sincerely,



Antonio Castellucci